Islamic Concept of Crime and Punishment: A Critical Appraisal of Robert Spencer's Views

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Abstract:

Islam caters to people's need for peace and serenity and therefore takes every legal measure to safeguard the society against disruptive elements. A criminal who spoils the tranquility of a peaceful society deserves to be awarded severe punishment but Islam does not deem it logical to execute punishments before eliminating the major causes for commission of crimes. The following research article describes the attitudes of Western critics of Islam--such as Robert Spencer-- towards Islamic penalties namely amputation and stoning to death. It describes Islamic concept of crime and punishment in comparison with Western concepts and attempts to prove that Islam never loses sight of moderation and inflicts no barbarities. The last part of the research article, through crime statistics of United States of America, proves that the they have disastrously failed to curb violent crimes in their society. Hence it is high time that the world recognized the effective role and deterrent value of Islamic punishments for peace and stability.

The Penalties are indispensable for turning anti-social attitudes into social ones. Even though if only a small segment of society feels punitive towards criminals, it would not be possible to abolish punishment because it curbs deviance. [1] Those who identify with the victim—not only his friends and family but those who can imagine the same injury being done to them—may join with him in clamoring for the punishment of the offender.

The 'norm of reciprocity' is dovetailed with human interaction; this animosity of the 'victim constituency' towards the criminals is an insurmountable hindrance to the abolition of punishment from our social existence[2]. Hence punishment is an unavoidable necessity.

The concept of crime and punishment alters with a shift of emphasis on the relative significance of individual and community. Therefore, it is pertinent to

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touch upon individual-community relation. In individualistic countries an individual is placed on a very high pedestal as being the pivot of all social activities. They believe in 'excessive' freedom of individual, therefore, they are comparatively more indulgent and lenient towards offenders.[3] They commiserate with the offenders because they regard them as victims of adverse circumstances, psychological diseases and nervous breakdown which irresistibly drive them towards commissions of crimes.[4] Consequently, they tend to reduce punishment a negligent level and resultantly the offenders keep on committing moral offences with impunity.

Contrary to the above mentioned attitude towards criminals, communist states inflict harsh punishment on those individuals who commit offences against sate, the sacred entity. Communist states attach paramount significance to economic factors as the major reason for crimes. They believe that a country suffering from economic plight and disorder cannot generate a conducive environment for virtuous deeds. Therefore, it is ill-advised to punish them. [5]

Psycho analysts explain crimes in an entirely different way. They negate as individual's freedom of will and action and believe that human beings behave in a psychologically predetermined way. Freud, for instance, considers offensive behavior—better called criminal acts—as the result of repression of sexual instincts by religion, morality and tradition etc.[6]

There is no doubt that the aforesaid concepts are partially true. It is undeniably true that individuals cannot escape the impacts of their environment. But one should not forget that human beings are not helpless creatures in the hands of circumstances and subconscious powers. Human beings are endowed with controlling energy to combat wild passions and impulses and confront adverse circumstances.

Islam does not disregard the relative responsibility of the criminal and the role of circumstances in commission of crimes. Similarly, Islam ensures proportionality between crime and punishment. Punishments are strictly avoided if an iota of doubt appears. Omar (RA) did not inflict the punishment of amputation during devouring famine as the thieves were compelled to theft by starvation. The slaves of Hatib ibn Abi Balta'a stole camel from the tribe of Muznah and after interrogation they were found guilty of theft. Omar, in the first instance, ordered amputation but considering their starving circumstance revoked his verdict. He instead penalized their master and ordered him to pay double prices for the she-camel.[7]

Disregarding all this, Robert Spencer remarks: "Two stiff penalties – stoning for adultery and amputation for theft—define Islamic Sharia law for many Westerners, and indeed, they are emblematic of its pre-medieval harshness and unsuitability for the contemporary world"[8]

Before labeling Islamic punishments as barbarous, it would be advisable and prudent to bear in mind an essential principle that such punishments are not allowed to be executed where social, political and administrative order is not perfectly in accordance with the spirit of Islam. It would be an enormity to

enforce Islamic punishments before ensuring the other prerequisite of Islamic morality and social order.[9] For instance, it would be wrong to flog or stone to death the fornicator and fornicatress or to flog the accused for blaming virtuous and innocent people before establishing proper Islamic system of veil (hijab), marriage and divorce. Such punishments are not meant be enforced in a society marked by its nudity, obscenity and vulgarity. These are to be implemented in such society where Islamic law reigns supreme and where an individual finds it fairly easy to contract marriage, cancel the contract and exercise his or her right to divorce.[10]

Punishment, such as stoning or hundred lashes for illicit sexual intercourse, cannot be deemed barbarous and unjust, if the society has made every possible arrangement for legal satisfaction of sexual desires. In such circumstances, only criminals with unusually abnormal sexual proclivities would dare commit sexual enormities and reason demands that such offenders must be awarded exemplary punishment so that the other members of the society may live in peace and the potential criminals are deterred.

Contrary to perfect Islamic society, if an un-Islamic society provides its members with frequent opportunities for illegal sex, accords male and female an unrestrained freedom for mixing and gathering in offices, colleges, schools, clubs and recreation centers etc, where due to overriding dissoluteness and moral decline illegal sexual relation is not deemed as a stigma on moral character: in such a society it would be undisputedly an injustice to award Islamic punishment.[11]

In such a society it would be well nigh impossible for an otherwise morally sound individual to avoid falling victim to immoral hazards and menaces God had not legislated these strict punishments (floggings and stoning) for a society contaminated by sexually immodesty and promiscuity.[12]

Likewise, there in an understandably logical connection between amputation for theft and Islamic economic order: both are dovetailed. In the absence of Islamic economic order, it would be inequitable and unreasonable to amputate the hand of a thief: it would be rather a double barbarity. [13]

Amputation is not legislated for a society practicing blatant injustice and gross economic inequality and grinding the poor to miserable circumstances. It is not meant for a society in which interest is lawful, zakat is negligent, justice is bought and sold like a commodity, sustenance is unavailable due to unreasonable and ubiquitous taxes and where such taxes are ruthlessly collected to boost the comfort and luxury of the upper class elite.[14] The western critics of Islam fail to notice the inseparability of these punishments and the Islamic economic order and consequently look upon them as exceedingly brutal and barbarous.

The western critics, keeping in mind their society—where illicit sexual relations are matters of normal occurrence— imagine that implementation of Islamic law would lead to flogging and stoning of thousands of criminals daily. A society where there is rampant promiscuity and shameful immoralities would be witness to the ‘cruel’ scene of ‘harsh punishment’. In this connection, one of

the most noteworthy points which demands serious consideration is that Islam believes in wisdom and never loses sight of moderation.[15] On the one hand, Islam enjoins it followers to eradicate from society all the reasons and motives for crimes which might compel and persuade an individual to commit and offence. On the other hand, Islam prescribes stringent punishments so that the criminal should horribly dread commission of crime again and the potential criminal should think twice before committing a crime.[16]

In addition to this, there are strict rules for evidence and proof and punishment is avoided as far as possible. Moreover, sufficient time is apportioned for investigation so that possible errors and fallacies on the part of witnesses may come out .The prophet (PBUH) said: avoid enforcing *hudood* as far as possible.[17] Omar (RA) is reported to have said that he would rather avoid enforcing *hudood* than implement it with doubt.[18] Likewise, the prophet (PBUH) is narrated to have said that a judge had better err in exoneration than in punishment [19]

But after the criminal is convicted and declared guilty of a criminal offence, no concession and mercy are entertained to alter the verdict .Fatima, a woman belonging to a highly prestigious family of Bani Mkhzum, was convicted of theft .When Osama bin Zaid was sent to intercede on her behalf , the Prophet(PBUH) turned furious , and addressing him said, 'you intercede in matter regarding hudood ul Allah? Even If my daughter, Fatima, had committed theft, I would cut her hand.[20]

Islamic concept of punishment is not driven by feeling of revenge or fury or malicious grudge. It is rather a means of purification and moral elevation. Islam instills it into the mind of the criminal that the real judge is God Almighty Himself from whom he can never conceal his wrongdoings. If the criminal somehow manages to conceal his/her offence and gets scot free, he would not be able hoodwink the Omniscient and the Omnipotent Judge in the hereafter. Islam informs its followers that he who is besmeared by the dirt of these sins and is punished for the same, his punishment would be deemed as penance and atonement for his sins. But he whose sin God prevented from being known, God will either forgive him or punish him.[21]

The astonishing influence of this guidance and teaching compelled criminals to move to the courts and confess their crimes without any external force or evidence . For instance, Ma'iz Aslami admitted to have committed adultery and asked for purification, Ghamidiyya followed suit , confessed forcination and was stoned when her baby was weaned . Similarly, Abu mahjan Saqafi was imprisoned for drinking wine during the battle of Qadsiya but he was eager to fight in the path of God therefore, requested the wife Sa'ad ibn Waqas to release him for participation in the battle. Consequent upon his request, he was released and he fought heroically but at at the end of battle returned and surrendered himself for punishment . However, Sa'ad (RA) refused to lash him saying ,' I can't flog the waist of a man who fought so selflessly in the path of Allah'. In response Abu Mahjan said, ' I would never drink again because I

hoped that you would purify me by punishment but you abolished all such hopes by letting me off'[22]

These events don't stand in need of further explanatory comments. It is as evident as broad day light that Islamic concept of punishment is perfectly justified as Islam not only takes every possible measure to prevent crimes but also inculcates commendable moral scruples in the criminals.[23]

History bears witness to the fact that in the four hundred long years of Islam the punishment of theft (i.e amputation) was executed six times only.[24] It shows that Islamic punishments have remarkably great deterrent value. At this point, it is pertinent to give details of FBI statistics of violent crimes in 2013 which according to them indicate an incredible downward progression since 2009.

a. There are an estimated 79,770 rapes reported to law enforcement agencies
b. Larceny-thefts accounted for the largest percentage of property crimes reported to law enforcement—69.6 percent
c. During 2013, an estimated 699,594 motors were reported stolen[25]

It is worth mentioning that these are statistics of reported crimes and the number of unreported crimes can be imagined by the readers on their own. Contrary to FBI crimes statistics, RAINN (Rape Abuse and Incest National Network) reports that each year there are about 293,000 victims of sexual assaults in United States of America.[26] The glaring discrepancy in statics portrays the American society in even darker and worse colors.

Notwithstanding this, Scholars like Robert Spencer fail to contemplate Islam in its entirety and jump to conclude that Islamic Punishments are barbarous, harsh and unsuitable for the modern world. There is no gainsaying the fact that the modern world has devised and utilized its sophisticated strategies to curb crimes but it miserably failed in its endeavors. It is high time that we implemented Islamic concept of crime and punishment so that the society may get rid of violence and injustice.

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